

passing the impugned award dated 14.11.2000 (Annexure P-16) so as to reject the claim of the petitioner.

3. Learned counsel for the petitioner further submits that in the present case, another employee who was appointed on the same date, along with the petitioner namely Mr. Ishwar Dutt Kaushik, was retained in service which also violates the provisions of the 1947 Act as juniors were retained in preference to the seniors hence, the termination of the services of the petitioner should have been held bad whereas, vide impugned award dated 14.11.2000 (Annexure P-16), the claim of the petitioner has been rejected.

4. Upon notice of motion, the respondents have appeared and have filed the reply to the present writ petition.

5. Learned counsel appearing on behalf of the respondents submits that the retrenchment compensation was assessed and was sent to the petitioner, but he never accepted the same hence, agitating that the termination of his services was in violation of Section 25F of the Industrial Disputes Act, 1947, is incorrect.

6. Learned counsel for the respondents further submits that once, the petitioner had conceded the fact that Mr. Ishwar Dutt Kaushik was appointed on the same date as the petitioner, nothing has come on record that he was junior to the petitioner in any manner hence, in the absence of any evidence that Mr. Ishwar Dutt Kaushik was junior to the petitioner, the claim that the provisions of the 1947 Act was violated on the said account also has rightly not been accepted by the Labour Court while rejecting the claim raised by the petitioner.

7. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

8. It is a conceded fact that the petitioner was appointed as Clerk-cum-Typist and was continuing on 89 days basis. The 89 days basis appointment orders are passed from a particular date of appointment till a particular date of relieving. The order dated 14.02.1989 relieving the petitioner also cites that the petitioner also worked on 89 days basis.

9. Keeping in view the said fact in consideration, the claim of the petitioner needs to be adjudicated as to whether, the denial of the benefit to the petitioner by the Labour Court is valid or not.

10. As per the settled principle of law, the Section 25F of the 1947 Act is only to be made applicable in case there is retrenchment.

11. Now, the question which arises is whether, an employee who is appointed on a particular date, and is to be relieved after completing his fixed tenure as envisaged in the appointment order due to non-extension of his/her contract, is to be treated as a retrenched employee or not.

12. For better understanding, Section 25F of the 1947 Act is as under:-

"Section 25F-Conditions precedent to retrenchment of workmen

[25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay

3[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 4(or such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

13. Further, certain exceptions have been given under Section 2(oo)(bb) as to under what circumstances, the dispensing of the services will not amount to retrenchment. Section 2 (oo)(bb) is as under:-

2 [(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

3 [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or"

14. A bare perusal of the above would show that where a contract of an employee has not been extended after the same came to an end, the same will not amount to retrenchment.

15. In the present case, it is conceded fact that the petitioner was working on 89 days basis and his services automatically came to an end after the said period expired as the contract was not renewed.

16. The services of the petitioner were never terminated as being alleged by the petitioner hence, once, the petitioner was to continue upto a

particular date and his services were never extended thereafter and the services of the petitioner was dispensed with, the same were covered under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 so as to not treat the same as retrenchment.

17. Further, with regard to the assertion, the retrenchment compensation was to be paid, it may be noticed that it has come on record that the amount of retrenchment compensation was assessed and was sent to the petitioner but he did not accept the same. The said fact has gone un rebutted.

18. In the present case, once, the retrenchment compensation had already been assessed and sent to the petitioner, non-acceptance of the same will not treat the termination illegal so as to contend that the provisions of Section 25F of the Industrial Disputes Act, 1947 have been violated.

19. The last argument which has been raised by the learned counsel for the petitioner is that the juniors were retained and the service of the petitioner was dispensed with.

20. It may be noticed that it is a conceded fact that Ishwar Dutt Kasuhik and the petitioner were appointed on the same date. Nothing has come on record that Ishwar Dutt Kaushik was junior to the petitioner in any manner. A person who was appointed on the same date, cannot be treated as senior or junior especially when there was no *inter se* seniority between them.

21. Further, no evidence has come on record that the petitioner has proved that Ishwar Dutt Kaushik was junior to him in any manner so as to claim the violations of provisions of Section 25F of the 1947 Act.

22. Keeping in view the totality of the circumstances, no ground is

made out for any interference by this Court as the perversity in the award dated 14.11.2000 (Annexure P-16) has not been shown hence, the present petition stands dismissed.

23. Pending application, if any, also stands disposed of.

28-04-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO